



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES
6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



ADMINISTRATIVELY CLOSED

Mr. Seth O Donnell
41 Mooers Road
Nottingham, NH 03290

NOTICE OF PROPOSED
LICENSE ACTION
No. 01-02

February 5, 2001

I. Introduction

This Notice of Proposed License Action is issued by the Department of Environmental Services, Water Division (DES) to Seth O Donnell, pursuant to RSA 541-A:30, RSA 485-A:35, I and RSA 485-A:36, I. DES is proposing to revoke the subsurface systems designers and installers licenses #3046 and #03327 held by Seth O Donnell, based on the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. TheThe Department of Environmental Services, Water Division The Department of Environmental Services, Water Division of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Seth O Donnell is an individual having a last known mailing address of 41 Mooers Road, Nottingham, NH 03290.

III. Summary of Facts and Law Supporting Proposed Action

1. RSA 485-A:29 authorizes DES to regulate the subdivision of land and the design and installation of subsurface sewage disposal systems. RSA 485-A:35, I and RSA 485-A:36, I authorize DES to license designers and installers of subsurface waste disposal systems. RSA 485-A:41 authorizes DES to adopt rules to implement the subsurface sewage disposal system program. Pursuant to this authority, DES has adopted NH Admin. Rules Env-Ws 1000.
2. DES issued subsurface sewage system designer permit number #3046 dated January 4, 2000 (the Designer Permit) to Seth O Donnell, to allow Seth O Donnell to design subsurface sewage disposal systems in the state of New Hampshire.

3. DES issued subsurface sewage system installer permit number #03327 dated January 4, 2000 (the Installer Permit) to Seth O Donnell, to allow Seth O Donnell to install subsurface sewage disposal systems in the state of New Hampshire.

4. Env-Ws 1003.08 requires that the owner of the property referenced in the application for individual subsurface sewage disposal systems to agree to a

statement on the application certifying their ownership of the property, that they have seen the submitted plans and that those plans accord with their needs and desires, that the owners understand that no waivers to the construction approval will be granted and that any changes require a new submission, review and approval.

5. On August 9, 2000, DES received an Application for Individual Sewage Disposal System Approval and assigned work #2000005540 to it (the Application). The Application was ostensibly signed by Mr. Adam Towle as owner of the property, and by Mr. Seth O Donnell as licensed designer of the proposed system.

6. On August 10, 2000, DES received a telephone call from Mrs. Jennifer Towle. Mrs. Towle stated that she and Mr. Towle had fired Mr. O Donnell prior to the submission of the Application and stated that they had not authorized Mr. O Donnell to submit the Application on their behalf.

7. Further, Mrs. Towle stated that Mr. Towle had not signed the Application, but that Mr. O Donnell had signed Mr. Towle s name on the Application without authorization from the Towles.

8. On the Application, Mr. Towle s name had been misspelled on the signature line.

9. RSA 485-A:43, I provides that any person who knowingly makes any material misstatement of fact for which said person is personally responsible in connection with an application for an approval pursuant to RSA 485-A shall be guilty of a misdemeanor if a natural person.

10. On July 12, 2000, DES received a Notice of Decision from the Merrimack County Superior Court in the matter of McBride v. Seth O Donnell d/b/a O Donnell s Excavating (Docket #98-C-0279). In this action, Mr. O Donnell was assessed a total of \$37,338.20 by the Court for having falsely held himself out as a licensed electrician qualified to install electrical wiring for a home septic system, for installing improper wiring for the septic system, making improper electrical connections, and having improperly buried the electrical wiring.

11. DES has received numerous other complaints concerning poor or improper subsurface sewage system design and installation work performed by Mr. O Donnell.

IV. Violations Alleged

1. Seth O Donnell knowingly made a misstatement of material fact for which he was personally responsible on an application for individual subsurface sewage disposal permit under RSA 485-A:29.

2. Seth O Donnell violated Env-Ws 1003.08 by substituting a false signature for that of the owners of the property on the Application.

V. Proposed Action

1. Based on the violations identified in IV.1 and IV.2, above, DES proposes to revoke the Designer Permit and the Installer Permit.


VI. Hearing, Response, Proposed Settlement

Seth O Donnell has the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which Seth O Donnell and any witnesses Seth O Donnell may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross examination. If Seth O Donnell wishes to have a hearing, one will be scheduled promptly.

RSA 541-A:31, III(e) provides that Seth O Donnell has the right to have an attorney present to represent Seth O Donnell at Seth O Donnell's expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) Seth O Donnell has the right to request DES to provide a certified shorthand court reporter at Seth O Donnell's expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

Seth O Donnell may waive his right to a hearing. If Seth O Donnell waives the hearing, DES is prepared to revoke his designer's and installer's licenses. Seth O Donnell should notify DES of his decision by filling out and returning the enclosed form by February 26, 2001.

Anyone having questions regarding this matter should contact Richard J. de Seve, Compliance Supervisor, at (603) 271-3442.


fns **COPY**
Harry T. Stewart, P.E., Director
Water Division

cc: Board of Selectmen, Town of Weare
Gretchen Rule, DES Enforcement Coordinator
Richard J. de Seve, Compliance Supervisor, DES Subsurface Systems Bureau

RETURN THIS PAGE BY MARCH 5, 2001

APPEARANCE

____ I desire a hearing in accordance with RSA 541-A:30 regarding the proposed revocation of the Permits.

Name: _____ Title: _____
(Please type or print legibly) (Please type or print legibly)

Signature Date: _____

WAIVER OF HEARING

____ I certify that I understand my right to a hearing regarding the revocation of the Permits and that I hereby waive those rights.

Name: _____ Title: _____
(Please type or print legibly) (Please type or print legibly)

Signature Date: _____

Please return to: Attn: James Ballentine, Paralegal
 Department of Environmental Services
 P.O. Box 95
 6 Hazen Drive
 Concord, NH 03302-0095